IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.11 OF 2007

Smt Anusayabai Ramchandra Shinde ...Appellant

Versus

Rajkumar Jitram Garg ...Respondent

Shri J.Shekhar for the Appellant.

CORAM : ABHAY S.OKA, J.
DATED : JULY 06, 2007.

P.C.:

1. Heard Advocate appearing for the Appellant. The submission of the learned Advocate for the Appellant is that the Appellate Court has committed an error by holding that the suit was barred by principles of res judicata. He submitted that the earlier suit filed by the Appellant was simplicitor for perpetual injunction and therefore, by no stretch of imagination the principles of res judicata are applicable. He submitted that the trial Court could not have rejected the claim of the Appellant on the ground that an objection was raised by the Appellant to the execution of the consent decree and the said objection was over-ruled. He submitted that courts below and in particular the Appellate Court has not at all considered the case made out by the Appellant on merits of the controversy involved in the suit.

2. I have considered the submissions. In the year 1970 the Appellant after purchasing the suit property filed a suit for perpetual injunction against the Respondent. The suit was dismissed. An Appeal was preferred by the Appellant. The said Appeal has been unconditionally withdrawn. The second suit was filed by the Appellant in 1972 which ended in a compromise decree. According to the case of the Appellant, the compromise was without her knowledge and the compromise was entered into by the second Plaintiff in the said suit. The Appellate Court has observed that apart from the fact that in execution of the compromise decree the Appellant raised various objections which were over-ruled by the executing Court, the Appellant had preferred an Appeal against the compromise decree which was dismissed for default. The Respondent is in possession on the basis of the aforesaid compromise decree. The prayer in the suit filed by the Appellant is for removal of the structure constructed by the Respondent and for possession.

3. In view of the aforesaid factual aspects, there is no error in the view taken by the Appellate Court. No substantial question of law arises. Second Appeal is accordingly dismissed.

JUDGE